IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8441 OF 2004

Smt. Anju Shukla Nayar .. Petitioner

V/s

Smt. Gomatidevi w/o Ratansingh Powar .. Respondent

AND

WRIT PETITION NO. 8520 OF 2004

Dayashankar Mishra @ Radheshyam Sidhnarayan Mishra .. Petitioner

V/s

Smt. Gomatidevi w/o Ratansingh Powar .. Respondent

Mr.M.P. Vashi for the petitioners.

Mr.M.V. Sawant for the respondent.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 18TH OCTOBER 2004

P.C. :

1. Since common questions of law and facts arise in both the matters, they were heard together and are being disposed of by a common order.

2. In both the matters, the Trial Court, in purported exercise of powers under Order XV-A of Civil Procedure Code, has directed the petitioners to deposit

certain amount towards monthly compensation in relation to the suit premises. However, before exercising the powers under Order XV-A of Civil Procedure Code, the Trial Court has not arrived at any finding about the materials on record being sufficient to exercise such powers under the said order and to direct the petitioners to deposit the monthly compensation. Needless to say that in order to enable the Court to exercise the powers under Order XV-A of Civil Procedure Code, it is necessary that both the parties to the litigation must be either landlord and tenant or licensor and licensee. Being so, before issuing any direction to deposit the amount of monthly compensation, it is necessary for the Court to decide as to whether the records prima facie discloses such relationship between such parties and only thereupon to issue the necessary direction in exercise of powers under Order XV-A of Civil Procedure Code. Undoubtedly, analysis of the material is for prima facie satisfaction of the Court to enable it to exercise the powers under Order XV-A of Civil Procedure Code.

3. The learned advocate for the respondent has fairly conceded that the impugned order does not disclose any such discussion and finding by the Trial

Court and, therefore, the matter be remanded to the Trial Court to hear the parties and to decide the matter afresh in accordance with the provisions of law.

4. Hence, by consent the impugned orders are hereby quashed and set aside and the matters are remanded to the Trial Court to decide the application for direction to deposit the amount of monthly compensation by the petitioners afresh in accordance with the provisions of law and bearing in mind the observations made hereinabove. Both the petitions are disposed of accordingly with no order as to costs.

5. The parties to the proceedings shall appear before the Trial Court on 13th December 2004 at 10.30 a.m. for further direction in the matter.

(R.M.S. KHANDEPARKAR, J.)